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Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

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June 14, 2016

To: Supervisor Hilda L. Solis, Chair  
Supervisor Mark Ridley-Thomas  
Supervisor Sheila Kuehl  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: Sachi A. Hamai  
Chief Executive Officer

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### SACRAMENTO UPDATE

#### Executive Summary

This memorandum contains a report on the following:

- **Pursuit of County Position Related to Proposed California Endangered Species Act (CESA) Permit Application Fees.** The Administration has proposed budget trailer bill language which would implement a new fee to cover costs associated with processing California Endangered Species Act (CESA) incidental take permits. Therefore, unless otherwise directed by the Board, because this proposal is counter to existing policy to support legislation that reduces the cost for acquiring permits from State agencies for the construction, maintenance projects and actions taken by public agencies to protect public health and safety due to emergencies, such as fires, flood and earthquakes, **the Sacramento advocates will oppose the proposed budget trailer bill language that would establish a new fee to cover costs associated with processing CESA incidental take permits, unless amended to exempt a permit application fee from the certain activities required to keep public infrastructure operating and functional, or to revise the fee rate schedule.**

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#### Pursuit of County Position on a State Budget Item

The Administration has proposed budget trailer bill language which would implement a new fee to cover some of the costs associated with processing California Endangered Species Act (CESA) incidental take permits. Specifically, the proposed trailer bill language would require the California Department of Fish and Wildlife (CDFW) to: 1) collect a permit fee for

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processing applications for specified permits issued by the CDFW to take an endangered or threatened species; 2) authorize the CDFW to impose fees ranging in cost from \$7,500 to \$30,000 based on the estimated cost of the project; 3) allow the CDFW to collect a fee of \$7,500 for processing minor permit amendments or \$15,000 for major permit amendments, as determined in regulation; 4) charge an additional fee of up to \$10,000 if the permit and amendment fees are determined to be insufficient to complete permitting work due to the complexity of a project or the potential effects of a project; 5) deposit the permit application fees collected and used to pay the CDFW's cost of processing permit applications, permit development, and compliance monitoring, and for implementing the California Endangered Species Act; and 4) increase the punishment of a violation of the prohibition against taking an endangered, threatened, or candidate species to a fine of not less than \$25,000, imprisonment for not more than one year, or both.

The California Endangered Species Act prohibits the taking (i.e., the catch, capture, or kill) of an endangered, threatened, or candidate species, except as specified. Under the CESA, the CDFW may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are fully mitigated.

The Department of Public Works reports that a new CESA incidental take permit fee would have an adverse impact on the Los Angeles County Flood Control District's (LACFCD) budget because currently most water resources projects are exempt from fees. The DPW also notes that more LACFCD facilities (such as channels and spreading grounds) are being developed for recreational use and may include installing landscaping. These areas could become habitat for endangered species which would require Department of Fish and Wildlife permits, therefore increasing a project's cost by several thousand dollars.

The Department of Public Works reports that the proposed trailer bill language could be amended in several ways in order to limit the fiscal impact of the fees on water resources projects. For example, the bill could be amended to exempt water resources projects from additional permit fees for activities that are needed to keep public infrastructure operating and functional, such as activities which are: 1) statutorily or categorically exempt from the California Environmental Quality Act; 2) undertaken to operate, maintain, repair, or restore existing publicly owned infrastructure; 3) undertaken in accordance with provisions of a habitat conservation plan or natural resources conservation plan; 4) considered an emergency; or 5) subject to the Lake and Streambed Alteration fees.

Alternatively, the DPW suggests that the definition of project cost could be revised to only include total direct expenses associated with the construction or implementation of a project (such as labor equipment, permanent materials and supplies, and subcontracts). Including indirect costs such as permits, licenses, and overhead costs may potentially penalize efforts to plan and design better functioning facilities that could have less impact on the environment.

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As another option, the DPW suggests that the permit fees could be based on factors other than the cost of the project, such as the size of the project's footprint, which typically dictates the level of the Department of Fish and Wildlife's efforts to protect and preserve sensitive resources and their habitats. For example, the DPW reports that a \$100.0 million dam rehabilitation project could impact only half an acre of land, but according to the proposed new fee structure, it would be assessed at least \$30,000 in fees (and potentially more for amendments or additional permitting work). The DPW indicates that another alternative is making the incidental take permit fees consistent with fees collected for Lake and Streambed Alteration permit review, which applies when any river, stream or lake is substantially diverted, obstructed or changed, or any debris or waste is deposited into a river, stream or lake. These fees range from \$245 for small projects and up to approximately \$4,900 for projects that cost \$500,000 or more.

The California State Association of Counties and the Rural County Representatives of California oppose the proposed budget trailer bill language.

This office and the Department of Public Works oppose the proposed budget trailer bill language unless amended to exempt a permit application fee from certain activities required to keep public infrastructure operating and functional, or to revise the fee rate schedule. Therefore, unless otherwise directed by the Board, because this proposal is counter to existing policy to support legislation that reduces the cost for acquiring permits from State agencies for the construction, maintenance projects and actions taken by public agencies to protect public health and safety due to emergencies, such as fires, flood and earthquakes, **the Sacramento advocates will oppose the proposed budget trailer bill language that would establish a new fee to cover costs associated with processing CESA incidental take permits, unless amended to exempt a permit application fee from the certain activities required to keep public infrastructure operating and functional, or to revise the fee rate schedule.**

We will continue to keep you advised.

SAH:JJ:MR  
PC:AO:lm

c: All Department Heads  
Legislative Strategist  
Local 721  
Coalition of County Unions  
California Contract Cities Association  
Independent Cities Association  
League of California Cities  
City Managers Associations  
Buddy Program Participants